

HB3744



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3744

by Rep. Ron Sandack

SYNOPSIS AS INTRODUCED:

New Act

Creates the Notice and Opportunity to Repair Act. Contains legislative findings and defines terms. Requires the service of notice to a construction professional of the complained-of defect in the construction by the homeowner prior to commencement of a lawsuit. Allows the professional to make an offer of repair or settlement and to rescind this offer if the claimant fails to respond within 30 days. Requires the claimant to file with the court a list of known construction defects. Directs the professional to provide a statutory notice to the homeowner upon the execution of a contract.

LRB099 07357 HEP 27471 b

A BILL FOR

1 AN ACT concerning real estate.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Notice and Opportunity to Repair Act.

6 Section 5. Findings; purpose.

7 (a) The General Assembly finds that limited changes in the
8 law are necessary and appropriate concerning actions claiming
9 damages, indemnity, or contribution in connection with alleged
10 residential construction defects.

11 (b) It is the purpose of this Act to implement the changes
12 identified in subsection (a) while preserving adequate rights
13 and remedies for property owners who bring and maintain actions
14 alleging residential construction defects.

15 Section 10. Definitions. In this Act:

16 "Action" means any civil lawsuit or action in contract or
17 tort for damages or indemnity brought against a construction
18 professional which asserts a claim, whether by complaint,
19 counterclaim, or cross-claim, for the damage or loss of the use
20 of real or personal property caused by a defect in the
21 construction of a residence or in the substantial remodel of a
22 residence. "Action" does not include any civil action in tort

1 alleging personal injury or wrongful death to a person or
2 persons resulting from a construction defect.

3 "Claimant" means a homeowner who asserts a claim against a
4 construction professional concerning a defect in the
5 construction of a residence or in the substantial remodel of a
6 residence.

7 "Construction professional" means any person performing or
8 furnishing the design, supervision, inspection, construction,
9 or observation of the construction of any improvement to real
10 property, whether operating as a sole proprietor, partnership,
11 corporation, or other business entity, and includes, but is not
12 limited to, an architect, builder, builder-vendor, contractor,
13 subcontractor, engineer, or inspector.

14 "Homeowner" means any person, company, firm, partnership,
15 corporation, or association who contracts with a construction
16 professional for the construction, sale, or construction and
17 sale of a residence. "Homeowner" includes, but is not limited
18 to, a subsequent purchaser of a residence from any homeowner.

19 "Residence" means a single family house, duplex, triplex,
20 quadraplex, or a unit in a multiunit residential structure in
21 which title to each individual unit is transferred to the owner
22 under the Common Interest Community Association Act or the
23 Condominium Property Act and includes general and limited
24 common elements as defined in the Condominium Property Act.

25 "Serve" or "service" means personal service or delivery by
26 certified mail to the last known address of the addressee.

1 "Substantial remodel" means a remodel of a residence for
2 which the total cost exceeds the maximum amount for a small
3 claim under Supreme Court Rules.

4 Section 15. Applicability.

5 (a) This Act:

6 (1) applies to any claim that arises before, on, or
7 after July 15, 2016, as the result of a construction
8 defect, except a claim for personal injury or wrongful
9 death, if the claim is the subject of an action commenced
10 on or after July 15, 2016; and

11 (2) prevails over any conflicting law otherwise
12 applicable to the claim or cause of action.

13 (b) This Act does not:

14 (1) bar or limit any defense otherwise available except
15 as otherwise provided in this Act; or

16 (2) create a new theory upon which liability may be
17 based.

18 (c) This Act does not apply if a construction professional
19 certifies to a claimant that immediate repairs are necessary in
20 order to avoid an imminent health or safety problem or in order
21 to avoid material additional damage to the property.

22 Section 20. Notice of claim of construction defects;
23 response by construction professional.

24 (a) In every construction defect action brought against a

1 construction professional, the claimant shall, before filing
2 an action, serve written notice of claim on the construction
3 professional. The notice of claim shall state that the claimant
4 asserts a construction defect claim against the construction
5 professional and shall describe the claim in reasonable detail
6 sufficient to determine the general nature of the defect.

7 (b) Within 21 days after service of the notice of claim,
8 the construction professional shall serve a written response on
9 the claimant by registered mail or personal service. The
10 written response shall:

11 (1) propose to inspect the residence that is the
12 subject of the claim and to complete the inspection within
13 a specified time frame and shall include a statement that
14 the construction professional will, based on the
15 inspection, offer to remedy the defect, compromise by
16 payment, or dispute the claim;

17 (2) offer to compromise and settle the claim by
18 monetary payment without inspection, which may include,
19 but need not be limited to, an express offer to purchase
20 the claimant's residence that is the subject of the claim
21 and to pay the claimant's reasonable relocation costs; or

22 (3) state that the construction professional disputes
23 the claim and will neither remedy the construction defect
24 nor compromise and settle the claim.

25 (c) If the construction professional disputes the claim or
26 does not respond to the claimant's notice of claim within the

1 time stated in subsection (b), the claimant may bring an action
2 against the construction professional for the claim described
3 in the notice of claim without further notice.

4 If the claimant rejects the inspection proposal or the
5 settlement offer made by the construction professional
6 pursuant to subsection (b), the claimant shall serve written
7 notice of the claimant's rejection on the construction
8 professional. After service of the rejection, the claimant may
9 bring an action against the construction professional for the
10 construction defect claim described in the notice of claim. If
11 the construction professional has not received from the
12 claimant, within 30 days after the claimant's receipt of the
13 construction professional's response, either an acceptance or
14 rejection of the inspection proposal or settlement offer, then
15 at any time thereafter the construction professional may
16 terminate the proposal or offer by serving written notice to
17 the claimant, and the claimant may thereafter bring an action
18 against the construction professional for the construction
19 defect claim described in the notice of claim.

20 (d) If the claimant elects to allow the construction
21 professional to inspect the residence in accordance with the
22 construction professional's proposal pursuant to subdivision
23 (b)(1) of this Section, the claimant shall provide the
24 construction professional and its contractors or other agents
25 reasonable access to the claimant's residence during normal
26 working hours to inspect the premises and the claimed defect.

1 (e) Within 14 days following completion of the inspection,
2 the construction professional shall serve on the claimant:

3 (1) a written offer to remedy the construction defect
4 at no cost to the claimant, including a report of the scope
5 of the inspection, the findings and results of the
6 inspection, a description of the additional construction
7 necessary to remedy the defect described in the claim, and
8 a timetable for the completion of the construction;

9 (2) a written offer to compromise and settle the claim
10 by monetary payment which may include, but need not be
11 limited to, an express offer to purchase the claimant's
12 residence that is the subject of the claim and to pay the
13 claimant's reasonable relocation costs; or

14 (3) a written statement that the construction
15 professional will not proceed further to remedy the defect.

16 (f) If the construction professional does not proceed
17 further to remedy the construction defect within the agreed
18 timetable, or if the construction professional fails to comply
19 with the provisions of subsection (e), the claimant may bring
20 an action against the construction professional for the claim
21 described in the notice of claim without further notice.

22 (g) If the claimant rejects the offer made by the
23 construction professional pursuant to subdivision (e)(1) or
24 (e)(2) to either remedy the construction defect or compromise
25 and settle the claim by monetary payment, the claimant shall
26 serve written notice of the claimant's rejection on the

1 construction professional. After service of the rejection
2 notice, the claimant may bring an action against the
3 construction professional for the construction defect claim
4 described in the notice of claim. If the construction
5 professional has not received from the claimant, within 30 days
6 after the claimant's receipt of the construction
7 professional's response, either an acceptance or rejection of
8 the offer made pursuant to subdivision (e)(1) or (e)(2), then
9 at any time thereafter the construction professional may
10 terminate the offer by serving written notice to the claimant.

11 (h) Any claimant accepting the offer of a construction
12 professional to remedy the construction defect pursuant to
13 subdivision (e)(1) of this Section shall do so by serving the
14 construction professional with a written notice of acceptance
15 within a reasonable time period after receipt of the offer, and
16 no later than 30 days after receipt of the offer. The claimant
17 shall provide the construction professional and its
18 contractors or other agents reasonable access to the claimant's
19 residence during normal working hours to perform and complete
20 the construction by the timetable stated in the offer. The
21 claimant and construction professional may, by written mutual
22 agreement, alter the extent of construction or the timetable
23 for completion of construction stated in the offer for any
24 reason, including, but not limited to, the repair of additional
25 defects.

26 (i) Any action commenced by a claimant prior to compliance

1 with the requirements of this Section is subject to dismissal
2 without prejudice and shall not be recommenced until the
3 claimant has complied with the requirements of this Section.

4 (j) Nothing in this Section may be construed to prevent a
5 claimant from commencing an action on the construction defect
6 claim described in the notice of claim if the construction
7 professional fails to perform the construction agreed upon,
8 fails to remedy the defect, or fails to perform by the
9 timetable agreed upon pursuant to subdivision (b)(1) or
10 subsection (h) of this Section.

11 (k) Prior to commencing any action alleging a construction
12 defect, or after the dismissal of any action without prejudice
13 pursuant to subsection (i), the claimant may amend the notice
14 of claim to include construction defects discovered after the
15 service of the original notice of claim. The claimant must
16 otherwise comply with the requirements of this Section for the
17 additional claims. The service of an amended notice of claim
18 shall relate back to the original notice of claim for purposes
19 of tolling statutes of limitations and repose. Claims for
20 defects discovered after the commencement or recommencement of
21 an action may be added to the action only after providing
22 notice to the construction professional of the defect and
23 allowing for a response under subsection (b).

24 Section 25. Effect of non-compliance.

25 (a) Any sums paid under a homeowner's warranty pursuant to

1 a specific claim made with respect to the alleged defect, other
2 than sums paid in satisfaction of claims that are collateral to
3 any coverage issued to or by the contractor, shall be deducted
4 from any recovery.

5 (b) If a contractor fails to comply with the requirements
6 of this Act, the claimant is not obligated to further comply
7 with the provisions of this Act and may commence an action
8 without satisfying any other requirement of this Act; none of
9 the provisions of this Act shall be applied to the detriment of
10 the claimant.

11 Section 30. Construction defect list.

12 (a) In every action brought against a construction
13 professional, the claimant, including a construction
14 professional asserting a claim against another construction
15 professional, shall file with the court and serve on the
16 defendant a list of known construction defects in accordance
17 with this Section.

18 (b) The list of known construction defects shall contain a
19 description of the construction that the claimant alleges to be
20 defective. The list of known construction defects shall be
21 filed with the court and served on the defendant within 30 days
22 after the commencement of the action or within such longer
23 period as the court in its discretion may allow.

24 (c) The list of known construction defects may be amended
25 by the claimant to identify additional construction defects as

1 they become known to the claimant.

2 (d) The list of known construction defects shall specify,
3 to the extent known to the claimant, the construction
4 professional responsible for each alleged defect identified by
5 the claimant.

6 (e) If a subcontractor or supplier is added as a party to
7 an action under this Section, the party making the claim
8 against the subcontractor or supplier shall serve on the
9 subcontractor or supplier the list of construction defects in
10 accordance with this Section within 30 days after service of
11 the complaint against the subcontractor or supplier or within
12 such period as the court in its discretion may allow.

13 Section 35. Mandatory notice.

14 (a) The construction professional shall provide notice to
15 each homeowner, upon entering into a contract for sale,
16 construction, or substantial remodel of a residence, of the
17 construction professional's right to offer to cure
18 construction defects before a homeowner may commence
19 litigation against the construction professional. The notice
20 shall be conspicuous and may be included as part of the
21 underlying contract signed by the homeowner.

22 (b) The notice required by subsection (a) shall be in
23 substantially the following form:

24 SECTIONS 1 THROUGH 30 OF THE NOTICE AND OPPORTUNITY TO

1 REPAIR ACT CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW
2 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
3 AGAINST THE CONSTRUCTION PROFESSIONALS INVOLVED IN THE
4 CONSTRUCTION OF YOUR HOME. BEFORE YOU FILE YOUR LAWSUIT,
5 YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE
6 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND
7 PROVIDE THE CONSTRUCTION PROFESSIONAL THE OPPORTUNITY TO
8 MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT
9 OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONSTRUCTION
10 PROFESSIONAL. THERE ARE STRICT DEADLINES AND PROCEDURES
11 UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR
12 ABILITY TO FILE A LAWSUIT.

13 (c) This Act does not preclude or bar any action if notice
14 is not given to the homeowner as required by this Section.

15 Section 40. No effect on other rights. Nothing in this Act
16 shall be construed to hinder or otherwise affect the
17 employment, agency, or contractual relationship between
18 homeowners and construction professionals during the process
19 of construction or remodeling and does not preclude the
20 termination of those relationships as allowed under the law.
21 Nothing in this Act negates or otherwise restricts a
22 construction professional's right to access or inspection
23 provided by law, covenant, easement, or contract.

1 Section 45. Tolling of statutes of limitations and repose.
2 If a written notice of claim is served under Section 30 of this
3 Act within the time prescribed for the filing of an action
4 under this Act, the statutes of limitations for
5 construction-related claims are tolled until 75 days after the
6 period of time during which the filing of an action is barred
7 under the applicable statute of limitations.